

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

TECHNICOLOR CREATIVE SERVICES USA, INC.,
Employer

and

Case No. 31-RC-8835

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES,
ITS TERRITORIES AND CANADA, AFL-CLC,
Petitioner

DECISION AND DIRECTION OF ELECTION

On August 19, 2010, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CLC (“the Petitioner” or “the Union”) filed petition 31-RC-8835, as amended at the hearing, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of production employees employed by Technicolor Creative Services USA, Inc. (“the Employer” or “Technicolor”) at its Glendale, California location.

On August 31 through September 3, 2010, a hearing was held on the referenced petition. There were three issues presented at the hearing:

- (1) Whether 49 client services representatives possess a sufficient community of interest with the other petitioned-for unit employees to be included in the petitioned-for unit; and
- (2) Whether 13 project managers are managerial employees within the meaning of Section 2(13) of the Act; and
- (3) Whether 13 project managers possess a sufficient community of interest with the

other petitioned-for unit employees to be included in the petitioned-for unit.

It is the Employer's position that the 49 client services representatives ("CSRs") and 13 project managers ("PJMs") should be included in the unit. It is the Union's position that the 49 CSRs and 13 PJMs should be excluded from the unit. The Petitioner has agreed to proceed to an election in any unit found by the Regional Director to be appropriate.

For the reasons set forth below, I conclude the following:

(1) The CSRs do not share a sufficient community of interest to require their inclusion in the petitioned-for unit.

(2) The PJMs are not managerial employees within the meaning of the Act.

(3) The PJMs share a sufficient community of interest to require their inclusion in the petitioned-for unit.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

I. HEARING OFFICER RULINGS: The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

II. JURISDICTION: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.¹

III. LABOR ORGANIZATION: The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

IV. QUESTION CONCERNING COMMERCE: A question affecting commerce exists concerning the representation of certain employees of the Employer

¹ The Employer, Technicolor Creative Services USA, Inc. is a Delaware corporation with facilities in Glendale, California where it provides post-production services to the theatrical and television industry. Within the past 12 months, a representative period, the Employer has provided post-production services to customers located outside the State of California valued in excess of \$50,000.

within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

V. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time, part-time, and temporary employees employed by the Employer at its Glendale location known as the Glendale campus in the Tape Operations Department as HD tape operators, HD video editors, production coordinators, telecine assist, telecine coordinators, video editors, video tape encoder, video tape operators; in the Quality Control Department as quality control operators, and quality spec check; in the Audio Operations Department as audio operators, digital media transfer operators, ingest operators, production clerks, transfer bay operators; in the Digital Media Operations Department as project managers, production coordinators, digital media technicians, metadata and delivery specialists, video compressionists, metadata and delivery operators, and data management operators; in the Facilities and Traffic Department as support services clerk, staggers, clerks, drivers, dispatchers, building maintenance technicians, labelers; in the Engineering department as audio engineers, senior telecine engineers, and videotape engineers; in the Broadband Operations Department as data management specialists, advance media systems engineers, media Asset management engineers, digital media production engineer, systems administrator; and in the IVS Department as transmission operators, media encoder, video engineer, digital media engineer; and in the Quality Assurance Department as project managers.

EXCLUDED: All client services representatives, administrative employees, office clerical and reception employees, confidential employees, sales employees, all other employees, guards and supervisors as defined in the Act.

In analyzing the issues in this case, I will first provide a brief overview of the Employer's operations. I will then specifically discuss the three issues presented.

A. Overview of the Employer's Operations

The Employer runs a post-production facility at its campus in Glendale, California (“the campus”). This facility provides entertainment studios services to reformat their content for worldwide distribution. The media received by the Employer is referred to as an element, which can either be digital or physical. The Employer provides more than 100 clients with services including, *inter alia*, dubbing, modifying frame rates, and adjusting the formats of various video and audio elements. There are approximately 350 employees at the campus.

The campus is comprised of several buildings referred to as T1, T2, T3, T4, T5, TR1, TR2, and ENG. It takes approximately four minutes to walk from T1 to T5, the farthest points on the campus. T1 houses the Employer’s Client Services, Human Resources, and finance, as well as the Vice-President of Operations (“the VP”). T2 is primarily dedicated to the Employer’s audio support services. T3 is referred to as the Employer’s standard definition building, which houses tape decks and the Employer’s NTSC and VHS duplication processes.² T4 houses the Employer’s high definition and tape operations, Quality Control (“QC”) operations, and the electronic press kit room where three or four operators work on the previews shown in movie theaters. T5 houses the Employer’s digital media services. The Facility and Traffic Operations Department, also referred to as Support Services, is located in TR1 and TR2. TR1 houses the Employer’s receiving operations and TR2 houses the Employer’s shipping operations. There are employees in TR1 and TR2 in the classifications of stager, receiving, shipping, and driver. Finally, ENG houses the Employer’s engineering services and is also where the Employer stores some of its assets.

The VP is the highest-ranking individual at the campus. The VP’s direct reports include the Director of Tape Operations and Quality Control; the Director of Audio Operations; the Director of Client Services (“DCS”); the Director of Quality Assurance and Digital Media; the

² NTSC and VHS refer to different types of tape formats.

Director of Facility and Traffic Operations (also referred to as Support Services); the Director of Engineering; the Director of Broadband Operations; and the Director of IVS. Each of the departments has a different hierarchy structure.³

The Employer's Glendale campus receives approximately 300 work orders each day with about 70% of the Employer's work being tape-based. Projects are all initiated by the creation of a work order and no work should be done in the absence of a work order. The Employer's client services representatives ("CSRs") receive an order from a customer by phone, purchase order, or fax. Upon receiving an order from a client, the CSR creates a work order which is given to one of the Employer's operators to complete. If the operator does not encounter any problems completing the work order, the product is shipped out by the Employer's shipping department to the customer. However, in 65-70% of the work orders processed by the Employer in a day, an issue arises in the processing of a work order that results in the creation of a discrepancy report ("DR"). A DR is a form used by the Employer to document any issues that come up in the processing of a work order. Discrepancies are reported by operators and while operators have access to create DRs, the protocol is for the operators to report the issue to their supervisors who then create the DR. The CSR who created the work order will receive notification of the DR. Once the discrepancy is resolved and the project is completed, the product will be delivered to the customer either physically or electronically.

Over the past three to four months, the Employer's workload has been low and, in order

³ In Tape Operations there is 1 director, 3 managers, and 4 production supervisors overseeing 54 employees. In Quality Control, there is 1 director, 1 manager, and 2 supervisors overseeing 43 employees. In Audio Operations, there is 1 director and 4 supervisors overseeing 40 employees. In Client Services, there is 1 director, 4 senior account managers, 8 account managers, and 49 client services representatives. In Quality Assurance, there is 1 director overseeing 6 PJMS. In Digital Media Operations, there is 1 director, 1 production manager, and 3 production supervisors overseeing about 44 employees, including 7 PJMs who directly report to the director. In Facilities/Traffic, there is 1 director and 1 manager overseeing 33 employees. In Engineering, there is 1 director who oversees 8 engineers. In Broadband Operations, there is 1 vice-president and 2 directors overseeing 11 employees. Finally, in IVS, there is 1 director and 1 manager overseeing about 5 employees.

to avoid layoffs, the Employer has been sending some of its employees to work in areas to which they are not usually assigned. For example, a stager might be assigned to work in QC when QC needs additional assistance or, as the VP testified, he has used operators as staggers when necessary and staggers to help Client Services clear out inventory stored at the campus. While there is some movement between the buildings on the campus, most employees are based out of one particular building. For example, tape operators would be assigned to either T3 or T4 and they would do their work in the building to which they are assigned. During this recent period of time, the VP testified that he assigned fewer than 20 employees to other locations to avoid layoffs since it did not help the Employer as much as it would have liked.

B. Unit Placement of the Employees

The Board recognizes that there often is more than one way in which employees may appropriately be grouped. The Board does not require a petitioner to seek any particular appropriate group. Rather, the Board only considers whether the unit requested is an appropriate unit even if it may not be the optimum or most appropriate unit for collective bargaining. *Overnite Transportation*, 332 NLRB 723 (1996). In determining an appropriate unit in a representation case, the Board first considers the unit requested by the union and determines whether that unit is appropriate. It is only when the petitioned-for unit is not appropriate that the Board considers alternative units proposed by the parties. *P.J. Dick*, 290 NLRB 150, 151 (1988). Thus, it is not my role to determine whether the unit requested by the Petitioner or the unit proposed by the Employer would be the most appropriate. Instead, I must determine whether or not the unit requested by the Petitioner is an appropriate unit.

Where the parties disagree as to what constitutes an appropriate bargaining unit, the standard for determining the appropriate bargaining unit is a community of interest analysis. *See Turner Indus. Group, LLC*, 349 NLRB 428 (2007) citing *Kalamazoo Paper Box Corp.*, 136

NLRB 134 (1962). The following factors relevant to the employees' community of interest must be evaluated: the extent of centralization of management, supervision and human resources functions; the similarities in the employees' terms and conditions of employment; the differences in the types of work functions and the skills of employees; the extent of functional integration of the operations; the extent of contact and interchange between employees; and the bargaining history. *Lawson Mardon U.S.A.*, 332 NLRB 1282 (2000); *Edenwald Construction, Co.*, 294 NLRB 297 (1989).

1. Employees in the Petitioned-For Unit

Employees in the petitioned-for unit includes approximately 149 operators or technicians, 33 Support Services employees, 16 engineering employees, and 33 employees in classifications including, but not limited to, editor, coordinator, and specialist. Operators and Support Services employees are paid hourly and are not eligible for bonuses.⁴ Employees in T2, T3, T4, and T5 cover a 24 hour a day/7 day a week schedule ("24/7") with a dayshift (7:00 a.m. to 3:30 p.m.), swing shift (3:30 p.m. to 11:30 p.m.), and graveyard shift (11:00 p.m. to 7:30 a.m.). The record evidence provided some detail as to the terms and conditions of employment of the operators. The Employer's audio operators are highly trained and have been in the business for an average of 20 years. Operators' performance is evaluated by and they are disciplined by production supervisors or production managers. However, all managers have the right to enforce company policy. Ideally, operators spend 100% of their working time on a machine. Direct client contact is not part of the operators' normal job duties as only about 5 of the 120 operators have direct client contact. At the beginning and end of each shift, the production supervisors hold team meetings referred to as huddles, which are regularly attended by operators. The purpose of these

⁴ The record contains evidence that all of the Employer's employees are eligible for cash spot awards granted to employees for their work. The cash spot awards are distinct from bonuses but the record does not contain evidence regarding how they are distinguishable.

meetings is to update the incoming operators about what work is left to be done and to discuss equipment problems.

Some of the other employees in the petitioned-for unit work in the Facility and Traffic Operations Department (also referred to as Support Services). These employees are in the following classifications: services clerk; stager; clerk; driver; dispatcher; building maintenance technician; and labeler. Employees assigned to receiving must receive the element, record information about the element in the Employer's database, place the element in the appropriate location, and scan that location to the system. Employees assigned to shipping follow shipping orders to deliver the product to the Employer's customers. The building maintenance technician provides janitorial maintenance services including emptying refrigerators and refilling the toilet paper. Other employees within the petitioned-for unit work within the Employer's Engineering Department and Broadband Operations Department. The engineers dedicated to older analog tape or audio-based systems report to the Director of Engineering while the engineers focused on digital systems report to the Director of Broadband Operations. Engineers maintain equipment on campus and also develop new software.

The Technicolor Employee Handbook applies to all of the employees in the petitioned-for unit as well as the disputed classifications of CSR and PJM. Likewise, all employees are provided with the same health, dental, and accidental death and dismemberment life insurance. The Employer's vacation policy applies to all groups of employees.⁵ The same disciplinary policies apply to all employees at the campus and all employees at the campus are evaluated through the same evaluation system referred to as STEP (Systems for Technicolor Employee Performance).

⁵ The only policy that applies to some employees and not others is a dress code policy applicable to Support Service employees. The only other distinct policy on the campus is a heightened security policy applicable those entering T5, which houses sensitive elements.

2. Client Services Representatives (“CSR”)

The CSRs are housed in T1 and are part of the Employer’s Client Services Department where they are supervised by account managers and the Director of Client Services (“DCS”). The record was not specific with respect to wages earned by CSRs; however, the record contains some testimony that CSRs earn within the range of employees in the petitioned-for unit. CSRs are hourly employees who work five days a week rather than the 24/7 schedule worked by other employees in the petitioned-for unit. No CSRs work the graveyard shift and 47 out of the 49 CSRs work the day shift. None of the CSRs work on the weekends.

Client Services’ role is to receive an order from clients by phone, purchase order, or fax. The Client Services department also receives requests for quotes and communicates with the billing department to provide quotes to clients. Once a CSR generates a work order, it is printed and picked up by a runner who then brings the order to one of the other buildings where the work is performed. An operator, upon receiving the work order, performs the work, gives status information on the order itself, and closes out the order. Once the order is completed, the product, if it is a tape rather than a digital product, is sent to the shipping department for shipment. If the product is digital, upload operators working in T5 upload the media to the clients. The work order form then returns to the CSR to verify that everything is correct and is then sent to billing.

CSRs interact with clients directly to receive orders and to ensure that the clients are getting their desired end product. CSRs do not operate the machines used in the production process by operators and only about 5 of the 49 CSRs have had any training on Employer’s digital programs.⁶ There is no evidence that any of the CSRs are trained to work in the

⁶ The record does not contain details regarding this training nor does it provide any specific evidence of CSRs filling in for operators in digital media.

Employer's audio or tape operations. As described above, the record contains evidence regarding the daily huddles which take place daily in T2 and T5. At neither location do CSRs attend the huddles.⁷

The CSR also generates a spec sheet which is part of the work order by using a template that has been created by two of the PJMs and the Director of Quality Assurance and Digital Media. The CSR, using the template, plugs information into the template which then automatically inserts the majority of instructions for the operator to complete the work. In situations when the CSR makes an error in the spec sheet, the issue will usually be raised by the operator who is to notify the CSR's account manager. According to the DCS, an operator does not need the spec sheet to complete a project.

The CSR tracks the work order while it is in production and may be involved in resolving any problems with completing the work order. CSRs may have face-to-face contact with an operator when there is a question on a job. While CSRs are allowed to get up from their desks and go to other of the Employer's buildings, they are not required to do so. The DCS testified that she does not expect CSRs to leave their desks to meet with operators in person when it is not necessary as they need to be at their desks when a customer calls as much as possible. The DCS was not able to testify as to how often CSRs are on the floor with operators. On occasion, CSRs will run work orders to other buildings, but normally they do not walk into another building to disturb the operators.

According to the DCS, CSRs are not to communicate with operators directly but rather through the production supervisors. The production supervisors do not want the CSRs going directly to the operators because it is disruptive for everybody. Consistent with the DCS's testimony, a digital media technician testified that he does not interact with CSRs and that he

⁷ The audio operator recalled one occasion when he saw a CSR at a huddle waiting to speak with a supervisor.

was reprimanded for communicating directly with a CSR when he was first hired about two years ago. At that time, he was instructed that he must go through the production supervisor rather than directly contact a CSR. One tape operator testified that, over the last 14 years, on five or six occasions, she has worked side by side with a CSR and on three or four occasions a CSR has come to speak with her about an assignment. She also testified that a production supervisor instructed her that operators are not to call CSRs but are to communicate through the production supervisors.

According to the VP, the CSRs work directly with operators with respect to their trailer operations in that the CSRs regularly check with the audio group to ensure that the work is scheduled and also in digital media on some of the newer work the Employer is doing for its client Disney, which requires a tight turnaround. However, according to one audio operator, he does not frequently interact with CSRs since most of their interactions go through the production supervisor first. In fact, only twice in the last 13 years has this particular audio operator sat alongside a CSR.

The Employer's on-boarding process refers to product development where the Employer brings on a new type of workload or a new client. Engineering would be involved in on-boarding to create new software and operators would be involved to the extent that they must learn to use the newly-developed software. CSRs would be involved in on-boarding as conduits to communicate between the client and the operators and engineers. CSRs do not develop software. In one example in the record, the Employer received a work order requesting what is referred to as a mezzanine file.⁸ In that case, the CSR told the client that its request was too complicated and suggested an alternative approach. In suggesting this alternative, the CSR was

⁸ A mezzanine file is a file used to make other types of files.

“involved with” the Employer’s engineers who were speaking with the client’s engineers.⁹ In another example, the Employer’s client AT & T wanted to air the World Cup through its U-verse system. The Client Services group was involved in helping to determine how to receive the satellite signals within the time allotted. The CSR worked with the Employer’s engineering department to reduce the amount of time it would take to get the work done. Lastly, six of the Employer’s CSRs are involved in the Disney accelerated project.¹⁰ The CSRs’ role in this project is to be sure that no Discrepancy Reports (“DRs”) need to be created. The record did not provide detail as to how the CSRs ensure that no DRs are created.

As for hiring, the Employer has hired some CSRs with some experience in the field and has also hired from within the company. With respect to the internal hires, the DCS recalled hiring CSRs from the Support Services department. In the instances when the DCS has hired a Support Services employee as a CSR, she has placed that employee in a lower level position and trained him. The record does not reveal how many Support Services employees became CSRs. When hiring a CSR, the DCS is looking for experience in the industry; basic film, video and audio knowledge; customer service background; and computer skills. No hands-on experience is required. In terms of training, it can take up to a month of training for a CSR to understand the terminology used by the Employer.

As for movement between Client Services and other of the Employer’s departments, the DCS testified that she recalled one occasion of a CSR who had previously held a position outside of Client Services, but the record was unclear as to whether the individual was an operator or a supervisor. While there was testimony about promotions from Support Services to other

⁹ The record does not provide detail as to the CSR’s involvement with the Employer’s engineers in this example.

¹⁰ The Disney accelerated project refers to a workflow that enables ABC to make new programming available to affiliates worldwide at the same time it airs in New York. This workflow usually calls for a 48-hour turnaround for the Employer to complete its role in the process.

positions in the unit, the record contains no details or specific examples of these promotions.

a. Legal Analysis

In determining whether CSRs must be included in the unit, I analyze whether the CSRs share a community of interest with the employees in the petitioned-for unit. The CSRs are housed separately from and do not share supervision with any of the employees in the petitioned-for unit. CSRs are covered by same employee handbook as the employees in the petitioned-for unit. However, CSRs work five days a week rather than a 24/7 schedule worked by other employees in the petitioned-for unit, with no CSRs working the graveyard shift and 47 out of the 49 CSRs working the day shift. Moreover, none of the CSRs work on the weekends. I note that the Employer's operations continue nights and over the weekends in the absence of CSRs. *Cook Composites*, 313 NLRB 1105, 1109 (1994).

It is the CSRs' role to interact directly with clients in order to receive the work order and to clarify, with the client, any issues that come up during the production process. CSRs do not operate the machines used in the production process by operators and only about 5 of the 49 CSRs have had any training on Employer's digital programs. None of the CSRs are trained to work in the Employer's audio or tape operations. CSRs do not attend the daily huddles attended by employees in the petitioned-for unit. The record reveals rare instances in which a CSR works alongside an operator and to the extent that the record includes any specific evidence of CSRs working alongside operators, the evidence shows that the CSRs' role is to act as a conduit of information between the operator and the client. The record also establishes that CSRs and operators are expected not to communicate directly with one another but are to communicate through the production supervisors if necessary. Given that CSRs are the face of the Employer in dealing with clients, CSRs, unlike other employees in the petitioned-for unit, must be skilled in providing customer service to the Employer's clients.

The Board in *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1272 (2005), noted that, “with respect to the factor of interchange, the Board distinguishes between two types of interchange—temporary transfers and permanent transfers—and ‘regard [s] permanent transfers to be a less significant indication of actual interchange than temporary transfers.’” In the instant case, the only evidence regarding temporary transfers of CSRs was that, over the past three to four months, the Employer, to avoid layoffs, has sent staggers to help Client Services clear out inventory stored at the campus. With respect to permanent transfers, the record contains vague testimony regarding one operator who moved into Client Services and out of Client Services and some discussion of Support Services employees moving into Client Services. In determining functional integration, the Board looks for evidence of significant direct contact with production employees. *Palagonia Bakery Co., Inc.*, 399 NLRB 515, 535 (2003). The record does not evidence significant direct contact between the CSRs and the production employees. Finally, I note that there is no bargaining history regarding the petitioned-for unit or the CSRs.

b. Conclusion

In light of the foregoing, I conclude that CSRs do not share a sufficient community of interest with employees in the petitioned-for unit to require their inclusion in the unit. In this regard, I particularly note that the CSRs perform different functions and possess different skills than employees in the petitioned-for unit. I further note the virtual absence of interchange and limited contact with employees in the petitioned-for unit, as well as the different work schedules, location, and supervision of CSRs. Because I find that the CSRs do not have a sufficient community of interest to require their inclusion in the unit, I do not reach the Employer’s argument that the CSRs are plant clericals. Based on the above, I find that the CSRs are properly excluded from the petitioned-for unit. *See Dlubak Corp.*, 307 NLRB 1138, 1171 (1992).

3. Project Managers

The 13 PJMs at issue in this matter are part of the Quality Assurance and Digital Media Departments and are supervised by the Director of Digital Media Operations and Quality Assurance. Eight or nine of the 13 PJMs are located in T5 while the remainder are in T4. PJMs have workstations which include a computer. It is not the role of the PJM to communicate with clients as only 1 of the 13 PJMs has direct client contact. Four of the 13 PJMs cover a 24/7 operation. The PJMs are salaried and are eligible for bonuses. In terms of experience, according to the VP, all of the Employer's PJMs have been in the industry around ten years and four of the PJMs have been either production managers or supervisors in the past. The VP referred to PJMs as "quasi super operator[s]," having been trained in using most of the same tools operators use and with a broader base of knowledge than operators. The evidence reveals that on one recent occasion, PJMs, QC operators, and operators in T5, attended a training conducted by an outside vendor.

The Quality Assurance Department is tasked with inspecting and ensuring the quality of the Employer's product. Six of the PJMs are housed in the Quality Assurance Department and seven of the PJMs are housed in the Digital Media Department. Both Departments are headed by the same Director to whom all PJMs directly report. The role of the PJM is to troubleshoot after the fact and to set up clear instructions to assist the operators in completing work orders. Quality Assurance puts systems in place that ensure that the Employer is automatically creating quality product. PJMs have three major functions: responding to client defects; reviewing elements stored at the Employer's facility upon client requests; and, in the digital media department, PJMs, pursuant to an Employer policy, must verify that work has been done properly before certain work orders are delivered.

With respect to client defects, Client Services receives a call from a client regarding an issue with the product and the CSR creates a Corrective Action Request ("CAR") through the

Employer's computer system. A notification is immediately sent to the PJMs who have about two hours to determine the cause of the defect. Only PJMs investigate CARs. In the example of a tape-based defect, upon receiving the CAR, the PJM would call to request that the tape at issue be pulled and delivered to the PJM. The PJM would then schedule a time to operate a machine, run the tape, and try to analyze the cause of the defect. Ultimately, the PJM reports back to Client Services with his findings. If the client wants the defect fixed and the defect is minor, the PJM may make the repair, but, where it is more complicated, the element would be assigned to an operator or editor to be repaired. In the Digital Media Department, the PJMs handle rejections where the client has rejected the file for some reason, for example, the file has a glitch or is in an incorrect format. According to one PJM in T5, he might work with operators for help in looking at the rejection but would go through the operator's supervisor to see if the operator was available. According to one witness, about half of the PJMs' time is spent handling CARs.

In the Digital Department, PJMs frequently work with operators to sit beside the operators to help them with the workflow and to help them analyze problems or defects. According to one tape operator, about twice a year, she has worked with a PJM to help the PJM review a tape by placing the element in the machine and routing the element to a viewing station for the PJM. PJMs are also involved in what is referred to by the Employer as "quick turns." An example of a quick turn would be AT&T contracting with ESPN to buy the World Cup from ESPN to be downloadable through the AT & T's U-verse system within 12 hours of the match. In these types of quick turns, the PJM will do some of the steps in the workflow such as transferring files to keep the work moving.

Another duty assigned to PJMs is the creation of templates used in work orders. Two of the PJMs are responsible for creating these templates. The Employer limits the authority to create these templates to the PJMs and the Director to maintain control of the templates. PJMs

are also tasked with verifying metadata, which is the information used by the digital player to read and play TV and movie formats. When a PJM inspects metadata and corrects errors in the metadata, he works with the operators and the upload and metadata teams. Also, PJMs offer operator support by translating and reducing detailed customer specifications into instructions contained in the work order provided to the operator.

According to the Director of Media Operations and Quality Assurance, PJMs inspect tapes in the same tape room where operators are stationed. In the Digital Media department, PJMs may work alongside operators to help interpret instructions on a work order. The PJMs do not create any products on the machines but may use the machines to view an element. According to one PJM, he interacts with CSRs when they ask him questions about workflows and when they assign the Corrective Action Requests (“CARs”). Some of the employees currently employed at Technicolor were supervised by current PJMs who had been production supervisors. The record was unclear as to whether PJMs attend huddles with operators. The Director of Quality Assurance testified generally that in T5 the PJMs, if there, attend every huddle, but an operator from T5 testified that he has not attended a huddle at which a PJM was present.

In addition to the above-described duties, PJMs are involved in quality control spec checks. These are checks that are performed on some of the Employer’s orders. PJMs, QC operators, quality spec check employees, and digital media technicians can complete quality control spec checks.¹¹ In fact, the Employer has some work orders that require an internal spec check, meaning that the final product cannot be delivered to a customer without a PJM’s approval.

¹¹ “Quality spec check” refers to employees within quality control who verify the specifications on particular work orders. In contrast, Quality Control operators sit and view element to ensure the quality of the element.

a. Legal Analysis

(1) The Project Managers are Not Managerial Employees¹²

The Board has defined “managerial employees” as employees who have the authority to formulate, determine, or effectuate policies by expressing and making operative the decisions of the employer.” *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). Moreover, managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. While there are no firm criteria establishing whether an employee is managerial, the Board will only exclude an employee as managerial where he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy. *Yeshiva* at 682-3.

The Board has held that the party seeking to exclude individuals as managerial has the burden of coming forward with evidence necessary to establish such an exclusion. *George L. Mee Memorial Hosp.*, 348 NLRB 327 (2006); *Lemoyne-Owen College*, 345 NLRB 1123, 1128 (2005). As with other categorizations that cost employees the protection of the Act, the standard for conferring managerial status is narrowly construed and requires specific evidence of managerial activity and independent judgment. Moreover, the standard is conjunctive requiring that a managerial employee both formulate and effectuate employer policy. *Dist. #1, Marine Eng. Beneficial Ass’n*, 259 NLRB 1258, 1266 (1982).

The Union argues that the PJMs should be excluded from the unit because they are managerial employees. The Union cites to a work order for Buena Vista International, Inc. which calls for modifications in the formatting of episodes of a television program. In this work order there is a notation that once a Quality Control employee completes an internal spot check, the employee is instructed to “give to Supervisor or Gary Tyler upon completion” where Gary

¹² Neither party asserts that the PJMs are supervisors within the meaning of Section 2(11) of the Act.

Tyler (“Tyler”) is a PJM. The Director of Quality Assurance testified that the 7th step in the work order is critical and requires Tyler to sign off before it can go to the next step. The Union asserts that the PJM’s critical role and signing off on the work order evidences that the Employer equates Tyler with supervision and that he is aligned with management in perception and authority to approve the quality of the product. The Union also argues that at least half of the 13 PJMs were previously supervisors and that this supports a finding that PJMs are managerial employees. The Union points to evidence that when PJMs are investigating the cause of an error this may result in advising the production supervisor of operator error. I note that the record does not contain evidence of disciplinary action stemming from a PJM reporting an error to a production supervisor. Finally, according to the Union, the evidence that the PJMs have access to create templates used in work orders at the facility demonstrates that they are aligned with management rather than the petitioned-for unit employees. Moreover, argues the Union, the PJMs report directly to the Director of Quality Assurance rather than to production supervisors or managers as do other employees in the petitioned-for unit.

The record does not reveal specific examples of formulation or effectuation of management policies by PJMs nor does it establish the level of discretion the PJMs have in the exercise of their duties. While the PJMs are required to sign off on certain projects before they are delivered to the customers, the record does not establish what discretion this process entails. Other than statements that the role of the PJMs is to help put systems in place so that the Employer is automatically putting out quality product, there is no specific evidence regarding how the PJMs carry out that duty. Moreover, the cases cited by the Petitioner are distinguishable. For example, in *Virginia Manufacturing Co., Inc.*, 311 NLRB 992 (1993), the Board excluded a production control clerk where the clerk’s primary job function was to compile production information, keep track of inventory, prepare a list used by management in

determining daily production priorities, and monitor the production efficiencies of unit employees. The evidence in *Virginia Manufacturing* showed that the clerk at issue, in monitoring the efficiencies of production employees, would question operators concerning why their production percentages were low and would watch operators and time them to see how quickly they were working. It is clear that the duties of the clerk excluded by the Board in *Virginia Manufacturing* differ significantly from those of the PJMs in the instant matter.

I find that the Union has failed to meet its burden of establishing that the PJMs are managerial employees within the meaning of the Act. While the PJMs investigate product rejections, which might lead to looking at work performed by operators, the investigation is focused on the inspection of products rather than a confrontation of employees. *Virginia Mfg.*, 311 NLRB 992, 995 (1993). Moreover, there is no evidence that employees have been disciplined as a result of a PJM's CAR investigation. The PJMs' role in creating templates used by CSRs to create work orders does not, without more, establish that PJMs are aligned with management. In addition, the Union's argument that the PJMs' direct report relationship with the Director of the Department makes PJMs managerial is unconvincing given that other employees in the petitioned-for unit directly report to department directors. Given the absence of specific evidence that PJMs formulate and effectuate Employer policy, I find that there is insufficient evidence to establish that PJMs are managerial employees.

**(2) Project Managers Share a Community of Interest with the
Petitioned-For Unit**

The Union argues, in the alternative, that the PJMs, if found not to be managerial employees, should not be included in the unit based on community of interest principles. The Union points to a lack of common supervision with petitioned-for unit employees, and to the fact that their role differs from the role of operators in that PJMs are troubleshooters who investigate issues unlike operators who create the products. The Employer asserts that the PJMs do share a

community of interest and should be included in the unit.

The PJMs are supervised by the Director of Digital Media Operations and Quality Assurance who supervises not only the PJMs but also indirectly supervises approximately 37 employees in the petitioned-for unit who work in Digital Media. I note that the PJMs directly report to the Director of Digital Media unlike the 37 employees in the petitioned-for unit within that department. However, the record shows that other employees in the petitioned-for unit, for example, employees in the Engineering department, report directly to the Director of their Department. PJMs work in the same rooms and buildings as operators in T4 and T5. While not all PJMs modify elements, I note that other employees in the petitioned-for unit do not modify elements either. I find that the PJMs are functionally integrated into the production role as in many circumstances PJMs are required to approve work before it can be further processed and they, at least in the digital world, may do work that overlaps with work performed by employees in the petitioned-for unit, i.e. transferring files in the Employer's quick-turn jobs.

The PJMs in T5 use the same type of workstation as the digital media operators with the same software and access rights. The record also reveals that the PJMs attended at least one training with operators recently. The PJMs work with operators to inspect tapes, to help operators understand work order instructions, and to gather information to resolve rejections. As described above, the PJMs are covered by the same policies as employees in the petitioned-for unit and are eligible for the same benefits. However, unlike other employees in the petitioned-for unit PJMs are salaried and eligible for bonuses. The fact that the PJMs are salaried is not sufficient to outweigh the other factors that establish the community of interest. *Jero Steel Treating, Inc.*, 182 NLRB 522, 528 (1970). Likewise, the evidence regarding the PJMs' eligibility for bonuses is not dispositive as the record references cash spot awards for which all employees are eligible and fails to distinguish these awards from bonuses. Thus, I cannot find a

lack of a community of interest based on the PJMs' eligibility for bonuses. As there is no bargaining history, I cannot consider that evidence in my analysis of the community of interest factors.

b. Conclusion

I find that the PJMs' regular contact and placement with petitioned-for unit employees, receipt of the same benefits, hours, and the degree to which their jobs are functionally integrated into the production processes are sufficient to establish that the PJMs share a sufficient community of interest with the employees in the petitioned-for unit to require their inclusion in the unit. As I have found that PJMs are not managerial employees, I therefore will include the PJMs in the unit.

VI. CONCLUSION: On the basis of the foregoing and the record as a whole, I find that the CSRs have an insufficient community of interest with the undisputed positions in the petitioned-for unit to require their inclusion in the unit. I further find that the PJMs are not managerial employees and that they have a sufficient community of interest with the undisputed positions in the petitioned-for unit to require their inclusion in the unit. Accordingly, I shall direct an election in the following appropriate unit ("the Unit").

INCLUDED: All full-time, part-time, and temporary employees employed by the Employer at its Glendale location known as the Glendale campus in the Tape Operations Department as HD tape operators, HD video editors, production coordinators, telecine assist, telecine coordinators, video editors, video tape encoder, video tape operators; in the Quality Control Department as quality control operators, and quality spec check; in the Audio Operations Department as audio operators, digital media transfer operators, ingest operators, production clerks, transfer bay operators; in the Digital Media Operations Department as project managers,

production coordinators, digital media technicians, metadata and delivery specialists, video compressionists, metadata and delivery operators, and data management operators; in the Facilities and Traffic Department as support services clerk, staggers, clerks, drivers, dispatchers, building maintenance technicians, labelers; in the Engineering department as audio engineers, senior telecine engineers, and videotape engineers; in the Broadband Operations Department as data management specialists, advance media systems engineers, media Asset management engineers, digital media production engineer, systems administrator; and in the IVS Department as transmission operators, media encoder, video engineer, digital media engineer; and in the Quality Assurance Department as project managers.

EXCLUDED: All client services representatives, administrative employees, office clerical and reception employees, confidential employees, sales employees, all other employees, guards and supervisors as defined in the Act.

There are approximately 244 employees in the Unit found appropriate.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the Unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the Unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees in the Unit who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 31 Regional Office, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **October 6, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by E-Filing through the Agency's website, <http://www.nlr.gov>,¹³ by mail, by hand or courier delivery, or by facsimile transmission at (310) 235-7420. You may not submit the election eligibility list by e-mail to the Region. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or E-Filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice.

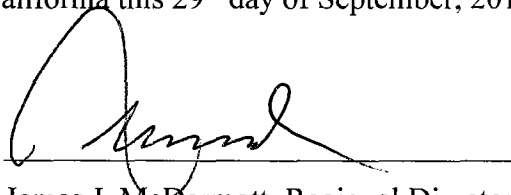
¹³ To E-File the eligibility list, go to <http://www.nlr.gov> and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Regional, Subregional and Resident Offices and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, <http://www.nlr.gov>.

Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **October 13, 2010**. The request may be filed electronically through the Agency's web site, <http://www.nlr.gov>,¹⁴ but may not be filed by facsimile.

DATED at Los Angeles, California this 29th day of September, 2010.



James J. McDermott, Regional Director
National Labor Relations Board
Region 31

¹⁴ To E-File the request for review, go to <http://www.nlr.gov> and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Board/Office of the Executive Secretary and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, <http://www.nlr.gov>.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

TECHNICOLOR CREATIVE SERVICES USA, INC.

Employer

and

INTERNATIONAL ALLIANCE OF THEATRICAL
STATE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES AND
CANADA, AFLCIO, CLC (IATSE)

Petitioner

Case No. 31-RC-8835

DATE OF MAILING September 29, 2010

AFFIDAVIT OF SERVICE OF: DECISION AND DIRECTION OF ELECTION (*Also Waiver Forms)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that, on the date indicated above, I served the above-entitled document(s) by postpaid certified mail upon the following persons, addressed to them at the following addresses:

Served by regular mail:

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7715 Sunset Blvd. #200
Los Angeles, CA 90046

Subscribed and sworn to before me this 29th day
of September, 2010.

DESIGNATED AGENT



NATIONAL LABOR RELATIONS BOARD